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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 PETER J. HELFRICH,

8 Plaintiff,

9 v.

10 DWIGHT NEVEN, et al.,

11 Defendants.

Case No. 2:14-cv-01725-RFB-NJK

ORDER

12  
13 **I. INTRODUCTION**

14 Before the Court is Defendants' Motion for Summary Judgment, (ECF No. 60). For the  
15 reasons stated below, the Motion is GRANTED.

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17 **II. BACKGROUND**

18 On October 17, 2014, Helfrich, who is a prisoner in the custody of the Nevada Department  
19 of Corrections ("NDOC"), initiated this lawsuit and also filed an emergency motion for  
20 preliminary injunction. (ECF Nos. 1, 4, 5). On October 29, 2014, this Court entered a screening  
21 order, which permitted some of Helfrich's claims to proceed and entered a 90-day stay to give the  
22 parties an opportunity to settle their dispute. (ECF No. 8). The Court stated that during the stay  
23 period that no other pleadings or papers shall be filed in this case, and the parties shall not engage  
24 in any discovery. (ECF No. 8). The Court also stated that the filings related to the motion for  
25 preliminary injunction (ECF No. 4) are excluded from this prohibition. (ECF No. 8). That same  
26 day, the Plaintiff filed an Amended Complaint. (ECF No. 9). On January 30, 2015, the Mediator  
27 reported a settlement had not been reached. (ECF No. 46).  
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1           On May 26, 2015, the Court held oral argument in which over 20 motions were decided  
2 upon. (ECF No. 138). On June 22, 2015 the Court entered a scheduling order. The Court extended  
3 discovery until September 14, 2015. (ECF No. 149).

4           Plaintiff filed his Amended Complaint on July 20, 2015. (ECF No. 157). On October 5,  
5 2015, the Court held another hearing which discussed numerous motions. (ECF No. 188). The  
6 Court granted Defendant's Motion for More Definite Statement and gave Plaintiff 21 days to refile  
7 an amended complaint. Between October 26, 2015 and June 30, 2016, Plaintiff filed numerous  
8 motions, addressed at a hearing on July 25, 2016. (ECF No. 277).

9           At that hearing, the Court denied numerous motions for injunctive and other relief, and  
10 ordered the following: Plaintiff would have 21 days, until August 15, 2016, to file a "final, clarified  
11 version of the July 20, 2016 amended complaint in accordance with the Court's prior instructions  
12 at the October 2015 hearing. Failure to do so will result in this case being dismissed with prejudice.  
13 No further extensions will be granted." The Court admonished that Plaintiff had to properly amend  
14 his complaint, "because otherwise if that's not done, and I want to be clear about this, right, your  
15 complaint will be dismissed and your case will be dismissed. And I also want to be clear I am not  
16 going to grant any further extensions of this deadline. You have 21 days from today to file your  
17 July – clarification as previously directed of your July 20th, 2015, amended complaint. If that's  
18 not done in that time frame, your case will be dismissed. Do you understand." Helfrich replied,  
19 "Yes."

20           Regarding the records that are the subject of Helfrich's subsequent filings, the Court stated:  
21 "Now, Mr. Helfrich, it's not my finding that the records that you are going to be looking at are  
22 actually necessary [for the filing of the clarified / amended complaint]. There's no indication from  
23 what I've seen now that they actually had those records . . . so I don't find that those records are  
24 necessary for you to file your amended complaint. Your amended complaint is about not receiving  
25 proper treatment for a condition and potential retaliation." Tr. at 20, Jul. 25, 2016.

26           Dispositive motions were due September 5, 2016. Responses were due two weeks from  
27 that date on September 19, 2016, with Replies due two weeks thereafter on October 3, 2016. On  
28 August 22, 2016, Helfrich filed a Motion to Extend Time to file his Amended Complaint. (ECF

1 No. 283). In a Minute Order on September 1, 2016, the Court granted the extension, giving Plaintiff  
2 until September 15, 2016, to file a final amended complaint, and setting a deadline for dispositive  
3 motions of September 29, 2016. Plaintiff has not filed any Amended Complaint.

4 Plaintiff filed a Motion for a hearing re ( ECF No. 275) Order to Produce Document and a  
5 Motion for Appointment of Counsel on September 1, 2016. (ECF Nos. 287, 288). Plaintiff filed a  
6 Motion for Sanctions on September 6, 2016. (ECF No. 289). Defendants filed a Motion for  
7 Summary Judgment on September 28, 2016. (ECF No. 297). Plaintiff never responded to that  
8 Motion. Defendants filed a notice of non-opposition on July 6, 2017. (ECF No. 305).

### 9 10 **III. DISCUSSION**

11 At the hearing on July 25, 2016, the Court gave Plaintiff 21 days to file the amended  
12 complaint, clearly stating that failure to do so would result in dismissal of the case. The Court  
13 stated that any delay in receipt of the requested medical documents—subject of (ECF No. 275)  
14 Order—were not relevant to the necessary revisions, and could not serve as a basis for any further  
15 delay. The minute order reiterated this ruling, listing the due date of August 15, 2016, and stating  
16 that “No further extensions shall be granted. Nonetheless, on September 1, 2016, the Court in a  
17 minute order granted Plaintiff’s Motion for an Extension of Time, giving Plaintiff until September  
18 15, 2016 to file a final amended complaint. Plaintiff has not filed any amended complaint.

19 The instant Motion for Summary Judgment was filed on September 29, 2016. (ECF No.  
20 297). Plaintiff has filed no response. FRCP 56(e) states, “Failing to Properly Support or Address  
21 a Fact. If a party fails to properly support an assertion of fact or fails to properly address another  
22 party's assertion of fact as required by Rule 56(c), the court may . . . (3) grant summary judgment  
23 if the motion and supporting materials--including the facts considered undisputed--show that the  
24 movant is entitled to it; or (4) issue any other appropriate order.” Pursuant to the Court’s prior  
25 order regarding the amended complaint, and FRCP 56(e)(4), the Court will dismiss this case for  
26 violation of the Court’s order and for failure to prosecute.

27 The Court finds that that motion by the Defendants supports a finding that the Plaintiff’s  
28 case should be dismissed for failing to establish that a genuine issue of material fact exists to

1 support any claim of the Plaintiff. Plaintiff has failed to provide any admissible evidence to rebut  
2 the Defendants' argument and evidence. Plaintiff's claims are all therefore dismissed.

3 The Court further finds that dismissal is appropriate in light of Mr. Helfrich's conduct prior  
4 to and at the hearing on July 12, 2017. Mr. Helfrich provided no explanation for his failure to file  
5 an amended complaint, in spite of the Court's warning of possible dismissal. Plaintiff has failed to  
6 respond to the Motion for Summary Judgment; did not comply with a direct order of the Court in  
7 spite of a warning that non-compliance could lead to dismissal; and reacted hostilely and  
8 inappropriately to the Court's inquiries at a hearing. As such, the Court finds that granting the  
9 Motion for Summary Judgment and dismissing this case is "an appropriate order" under FRCP  
10 56(e)(4). Plaintiff has demonstrated an unwillingness to abide by the orders of the Court and  
11 comport himself in a manner necessary to pursue this litigation.

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13 **IV. CONCLUSION**

14 Accordingly,

15 **IT IS HEREBY ORDERED** that [297] Defendants' Motion for Summary Judgment is  
16 GRANTED. The Clerk of Court is directed to enter judgment in favor of Defendants and close this  
17 case.

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19 DATED: September 29, 2017



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21 **RICHARD F. BOULWARE, II**  
22 **UNITED STATES DISTRICT JUDGE**  
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